

tors of the parties were fully heard, and the proceedings read and considered.

The general principles, referred to by the auditor, as the foundation of his objections to the several claims for which the deceased became liable only as an endorser, are these: That wherever it appears, from the voucher filed by a creditor as evidence of his claim, that the deceased was in any way jointly liable with others, the creditor must shew whether or not the deceased was equally bound as a co-debtor, or as principal, or surety, or whether he was bound with others as a co-surety. If he was bound as principal debtor, then the creditor is allowed to come in for the whole amount of his claim. But if the deceased was only bound as one of two or more principal debtors, then the creditor must shew that the other principal debtors are insolvent, or he will not be allowed to come in for the proportion which such other principal debtor might have been made to pay. If the deceased was only a surety, then the creditor must shew that the principal is insolvent, or he will be excluded altogether. And if the deceased was one of several sureties, then the creditor must not only shew that the principal is unable to pay, but that the other sureties are insolvent, or he will not be allowed to claim more than the equitable proportion for which the deceased was liable. If these facts and circumstances do not necessarily or sufficiently appear from the vouchers, filed as the foundation of the claim, then the burthen of explanation and proof is thrown upon the creditors, and that, too, by the *ex officio* act of the court, without any suggestions or objection to that effect being made by any other creditor or party in the case.

When I came here I found that these principles had been considered as long settled; but I have never been able to persuade myself to approve of them; and now, after some years of observation, I am satisfied that they occasion much embarrassment and delay in the administration of the real assets of deceased debtors; and oftener than otherwise result in absolute wrong and injustice to creditors against whom not the slightest misconduct can, in any manner, be imputed. I shall, therefore, as their correctness and true application have been called in question by these excepting creditors, take this occasion to examine the reasons and grounds upon which they have been rested.

It would seem that these principles, in relation to the administration of the real assets of deceased debtors, had been first introduced in the time of Chancellor *Hanson*. Speaking in refer-